

PUBLIC MATTER

FILED

FEB 06 2004

STATE BAR COURT
CLERK'S OFFICE
LOS ANGELES

THE STATE BAR COURT
HEARING DEPARTMENT - LOS ANGELES

In the Matter of

TAMELA J. MURPHY,

Member No. 190107,

A Member of the State Bar.

Case No. 00-O-14093; 02-O-13824-AIN
(Cons.)

DECISION

1. INTRODUCTION

In this consolidated disciplinary proceeding, Respondent Tamela J. Murphy ("Respondent") is charged in each case with aiding the unauthorized practice of law in violation of Rules of Professional Conduct, rule 1-300 (A), and with violations of Business and Professions Code, section 6106, moral turpitude. The Office of the Chief Trial Counsel ("OCTC") appeared by Brooke A. Schafer, Deputy Trial Counsel. Throughout most of this proceeding, Respondent was represented by Attorney James R. DiFrank ("Mr. DiFrank")¹.

In light of Respondent's culpability in this proceeding, and after considering any and all aggravating and mitigating circumstances surrounding Respondent's misconduct, the Court recommends, inter alia, that Respondent be suspended from the practice of law for one year, that execution of said suspension be stayed, and that Respondent be placed on probation for two years on conditions including that Respondent be actually suspended from the practice of law for the first 60-days of said period of probation.

¹On January 26, 2004, the Court issued an order permitting Mr. DiFrank to withdraw as Respondent's attorney, nunc pro tunc to January 19, 2004.



2. PERTINENT PROCEDURAL HISTORY

The State Bar filed on September 27, 2002, case no. 00-O-14093, charging Respondent in Count One with a violation of rule 1-300(A), aiding the unauthorized practice of law and, in Count Two, with a violation of Business and Professions Code, section 6106, moral turpitude - misrepresentation.

Respondent filed a motion on October 22, 2002, to dismiss the complaint.² On November 4, 2002, the State Bar filed an opposition to Respondent's motion to dismiss the complaint. On November 12, 2002, the Court, by Judge Pat McElroy, issued an order denying Respondent's motion to dismiss the NDC.

On December 3, 2002, Respondent filed a motion seeking reconsideration of the order denying dismissal of the complaint. On December 5, 2002, Judge McElroy issued an order denying Respondent's motion for reconsideration.

On December 11, 2002, the State Bar filed case no. 02-O-13824, charging Respondent in Count One with a violation of Rules of Professional Conduct, rule 1-300 (A), aiding the unauthorized practice of law and, in Count Two, with a violation of Business and Professions Code, section 6106, moral turpitude.

On December 30, 2002, the cases having been consolidated, Respondent filed a consolidated answer to the NDC in each case.

By order of Robert M. Talcott, Supervising Judge, dated December 27, 2002, these matters were transferred to Judge Alban I. Niles effective January 6, 2003.

After a contested hearing on the issue of culpability which was held on July 8-9, 2003, the Court issued a tentative ruling of no culpability in this matter. However, after carefully reviewing the facts and law in this matter, on December 4, 2003, the Court issued an Order reversing its tentative ruling and finding Respondent culpable in each of the consolidated matters. The Court also scheduled the matter for a hearing on January 20, 2004, regarding the issue of appropriate discipline.

²The term "complaint" actually refers to the Notice of Disciplinary Charges ("NDC") filed in this matter.

1 On January 20, 2004, Respondent failed to appear for the hearing on the issue of discipline.
2 However, Mr. DiFrank appeared and indicated that he had recently been terminated by Respondent.
3 Mr. Joseph Giannini also attended the hearing and filed, on behalf of Respondent, a motion for a
4 continuance of the trial and a motion to dismiss one matter for failure of proof and the entire case
5 for prosecutorial misconduct or, alternatively, seeking a 90-day continuance of trial to obtain new
6 counsel. Both motions were denied by the Court. However, the Court ordered OCTC to submit any
7 aggravating evidence by January 27, 2004, at 4:00 p.m. and ordered Respondent to submit any
8 mitigating evidence by January 27, 2004, at 4:00 p.m.

9 On January 23, 2004, Respondent filed Declarations & Evidence Re Culpability and Joseph
10 Giannini submitted a Declaration and Evidence Re Culpability in support of Respondent.

11 On January 22, 2003, OCTC filed a Brief re: Aggravation and Appropriate Discipline.

12 On or about January 27, 2004, the Court received the following documents: the declaration
13 of Louis Sepe; a letter dated January 27, 2004 from Allen J. Webster, Jr., Judge of the Superior
14 Court, County of Los Angeles; a memo dated January 27, 2004, from Richard Carlton, Deputy
15 Director of the State Bar's Lawyer Assistance Program; and a letter from Edward R. O'Carroll dated
16 January 27, 2004.³

17 On January 27, 2004, OCTC filed a Motion to Strike Joseph R. Giannini's Declaration &
18 Evidence Re Culpability.

19 On January 29, 2004, OCTC filed a Motion to Strike Portions of Respondent's "Declarations
20 & Evidence Re Culpability" and Certain Purported Character Evidence.

21 On February 3, 2004, the Court issued orders denying both of OCTC's motions to strike.

22 This matter was thereafter taken under submission for decision on February 3, 2004.

23 **3. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

24 **Jurisdiction**

25 Respondent was admitted to the practice of law in California on November 25, 1997, and has
26

27 ³These four documents are admitted into evidence and shall be marked by the Case
28 Administrator in this matter as Respondent's next in order.

1 been a member of the State Bar at all times since.

2 **Background Facts**

3 Sometime in 1998, Respondent and Joseph Robert Giannini ("Mr. Giannini") formed a
4 partnership which Mr. Giannini characterized as a law firm which was formed to help each other and
5 to help other people. Mr. Giannini has never been a member of the California State Bar. However,
6 he was admitted to practice law in Pennsylvania in 1983 and in New Jersey in 1984. He has been
7 admitted in federal courts, tax court and is authorized to practice before some administrative
8 agencies. Mr. Giannini has tried, without success, to become a member of the California State Bar.
9 He failed the bar examinations in 1986 and 1987.

10 Mr. Giannini has been engaged in litigation with the State Bar over the scoring of his bar
11 examinations. The bar has sued him and the suit is going on presently. Mr. Giannini has also been
12 an activist for reciprocity in California. In fact, Respondent testified that she met Mr. Giannini
13 through reciprocity meetings. However, to her knowledge, California does not grant reciprocity to
14 anyone.⁴

15 Respondent testified that the partnership with Mr. Giannini was formed for the purpose of
16 helping her with her personal injury cases. She also testified that the partnership lasted two to two
17 and one-half years. Upon learning that the State Bar had a problem with the partnership, Mr.
18 Giannini and Respondent decided to no longer be partners, and the partnership was terminated.
19 Respondent was aware that Mr. Giannini was not licensed to practice law in California.

20 The name of the partnership was Giannini & Murphy, Attorneys at Law. The address of the
21 firm was in Los Angeles, California.

22 **Case No. 00-O-14093 (Spencer)**

23 Sometime in February 2000, Respondent's law firm, Giannini & Murphy, was employed
24

25 ⁴ The foregoing facts are somewhat relevant to an issue raised by Respondent that bad
26 blood exists between Mr. Giannini and the State Bar, and that the State Bar is therefore on a
27 vendetta against Mr. Giannini and has taken it out on Respondent. The facts, however, do not
28 support such an allegation. Both of these matters came to the attention of the State Bar by
complaints filed in each case by different individuals. The objective evidence supports a finding
that the State Bar was merely carrying out its responsibilities in filing the respective cases.

1 by Robert Spencer ("Spencer") to represent him in a personal injury claim arising out of an
2 automobile accident on or about May 4, 1999, in Los Angeles, California. The retainer agreement
3 signed by Spencer referenced the firm of Giannini & Murphy.

4 On or about February 16, 2000, Mr. Giannini forwarded correspondence on "GIANNINI &
5 MURPHY, *Attorneys-at-Law*" stationary, signed by Mr. Giannini, to Mercury Insurance, on behalf
6 of Spencer, demanding that the claim be settled for \$15,000 and advancing legal arguments based
7 upon California law in support of Spencer's claim. Correspondence on Giannini & Murphy's
8 letterhead contained Mr. Giannini's signature and underneath the signature was "GIANNINI &
9 MURPHY By Joseph R. Giannini."

10 One letter, (Exhibit 16, herein) dated March 27, 2000, addressed to Mercury Insurance,
11 Attention: Loretta Tilley began as follows: "Dear Ms. Tilley: [¶] As you indicated in our phone
12 conversation yesterday, although you are trained in claim's handling, you are not a lawyer.
13 Therefore, you should check with a lawyer before you reject the legal justifications we have
14 submitted, namely: (1) that your insured is 100% at fault for crashing into the rear-end of Spencer's
15 vehicle; and (2) your insured cannot exculpate herself from 100% liability in this rear-end collision
16 case by blaming an alleged hit and run driver." The letter goes on to address various theories of
17 liability and the application of California law. It cited case law, code sections and treatises, and it
18 contained Mr. Giannini's signature and underneath the signature it states, "GIANNINI & MURPHY
19 By Joseph R. Giannini."

20 There were other letters in a similar vein. (See, for example, Exhibit 20, dated April 24,
21 2000, addressed to Leeann Linam, Supervisor.) Paragraph one of Exhibit 20 indicates that additional
22 information was being provided which establishes "your insured's fault for the subject rear-end
23 collision based on California case law and the Vehicle Code." Paragraph two references "our client
24 Robert Spencer. . . ." The letter discusses legal analysis, makes extensive citations to case law, the
25 Vehicle Code, the Civil Code, the Insurance Code, and even Black's Law Dictionary. The letter
26 contained Mr. Giannini's signature and underneath the signature it states, "GIANNINI & MURPHY
27 By Joseph R. Giannini."

28 Another letter (Exhibit 21, dated May 2, 2000, also addressed to Leeann Linam) extensively

1 discusses California law and its applicability to the Spencer case. For example, paragraph one states,
2 "Mercury Insurance's claim that an alleged hit and run driver absolves its insured of liability is
3 fundamentally wrong and inconsistent with the doctrines of joint and several liability, concurrent
4 causation and the applicable substantial factor test, and the doctrine of superseding cause."

5 Leeann Linam ("Linam") was, at the times relevant herein, a claims manager for Mercury
6 Insurance. As a branch claims manager, she had 28 people working for her. As branch claims
7 manager, Linam assigned cases and took calls if a supervisor could not handle the call. Linam had
8 five supervisors reporting to her. The chain of command in the Spencer matter for Mercury
9 Insurance was Loretta Tilley, examiner; Naomi Yamamoto, supervisor; and Linam, claims manager.
10 Ms. Linam had two conversations with Mr. Giannini on May 2 and 3, 2000. Ms. Linam formed the
11 belief that Mr. Giannini was an attorney licensed to practice in California. She based her belief on
12 the fact that he sent letters; he called; and he represented himself as an attorney settling the case for
13 his client. Linam had no conversation with Respondent or any communication of any kind with
14 Respondent. However, Linam admitted on cross-examination that Mr. Giannini never told her that
15 he was a California lawyer.

16 Based on the letterhead, the nature of the correspondence addressed to Linam, the calls made
17 to Linam and the representation made to her by Mr. Giannini that he was an attorney settling the case
18 for his client, the Court finds it was reasonable for Linam, or any reasonable person in her position,
19 to assume or to conclude that Mr. Giannini was an attorney at law licensed to practice law in
20 California. Mr. Giannini was writing from California on letterhead indicating Giannini & Murphy
21 Attorneys at Law; he was calling from California on a case arising in California; and he was
22 discussing California law. Any reasonable person would conclude from the foregoing facts that Mr.
23 Giannini was an attorney at law licensed to practice in California.

24 On May 2, 2000, Spencer filed a complaint for property damage and personal injury against
25 Mercury's insured, Cappie Baker, in the Los Angeles Superior Court. The lawsuit listed as attorneys
26 the law firm of "GIANNINI & MURPHY" and under that, TAMELA J. MURPHY, ESQ., and her
27 State Bar no. 190107. The complaint was signed by Respondent. Mercury Insurance tended the
28 defense of the lawsuit to the law firm of Daniels, Fine, Israel & Schonbuch.

1 Respondent made all of the court and deposition appearances in the Spencer matter.
2 Giannini attended one or two depositions but took no part in the depositions.

3 The law firm of Giannini & Murphy maintained bank accounts including a client's trust
4 account in which both Respondent and Mr. Giannini were signatories.

5 The retainer agreement in the Spencer matter was written out by Mr. Giannini. Before the
6 Spencer case was filed, Mr. Giannini worked quite a bit on the matter, and dealt with Mercury
7 Insurance by letter and by telephone. According to Mr. Giannini, Spencer was Respondent's client.
8 Respondent was in court during the day and he was merely a minister in the matter. He claims that
9 she was one hundred percent involved in the letters that he sent to Mercury Insurance. According
10 to Mr. Giannini, they discussed liability, and he was merely carrying out her dictates. He claims that
11 Respondent supervised everything, and that she told him what to do. However, the Court does not
12 find Mr. Giannini's claims credible.

13 Both Respondent and Mr. Giannini testified that they did extensive research by looking at
14 the Rules of Professional Conduct, the American Bar Association's Model Rules, Opinions of the
15 State Bar Court, and an ethics opinion regarding trust accounts. They both claimed that they never
16 looked at Business and Professions Code sections 6125 or 6126 or any sections of the Business and
17 Professions Code for that matter.

18 Respondent concluded after studying Rules of Professional Conduct, rule 1-100, that it was
19 perfectly legitimate to have a letterhead stating Giannini & Murphy Attorneys at Law. The Court
20 takes judicial notice of the fact that rule 1-100 alerts attorneys to the fact that "Members are also
21 bound by applicable law including the State Bar Act (Bus. & Prof. Code, §6000 et seq.) and opinions
22 of California courts."

23 Mr. Giannini had a business card (Exhibit 8 herein) with a Los Angeles, California address,
24 a Los Angeles phone number, and a Los Angeles fax number. The card listed him as "JOSEPH R.
25 GIANNINI, ESQ." In the upper lefthand corner of the card it stated, "Member of Bar[,] U.S.
26 Supreme Court." Respondent was aware of Mr. Giannini's business card, and she saw no problem
27 with it since Mr. Giannini was a member of the tax court.

28 Spencer was Respondent's friend's neighbor's son. Respondent testified that she instructed

1 Spencer to meet with her colleague, an out-of-state attorney. She instructed Spencer to give the
2 information regarding his accident to Mr. Giannini so they could get the case ready. She stated that
3 she supervised Mr. Giannini, and that she told him never to sign his name "attorney at law." She
4 also testified that she supervised and did everything; that sometimes Mr. Giannini would read the
5 letters to her over the phone; that she told him what to say; that they both did the legal research; that
6 the client approved the demand, and she was aware of the letters and substance of the materials sent
7 to Mercury Insurance; that after Mercury denied liability, she instructed Mr. Giannini to see if
8 someone there would talk to her, and that she got no response to that request. After reviewing some
9 of the letters, Murphy testified that she said, "Oh, my God, we need to have the asterisk where we
10 are licensed." She further testified that she and Mr. Giannini discussed how this happened, and it
11 was rectified.

12 Nevertheless, the fact is that some ten letters were sent to Mercury Insurance (see Exhibits
13 12-21) each of which bore the letterhead of GIANNINI & MURPHY, *Attorneys-at-Law*, with no
14 designation as to where either of them was admitted. Both Mr. Giannini and Respondent alleged
15 that Mr. Giannini typed the letters and allegedly failed to download the asterisk which showed where
16 they were licensed to practice law. The Court finds this to be one of the many lies told by both Mr.
17 Giannini and Respondent herein. As pointed out by Respondent's counsel in his closing argument,
18 nowadays it is not uncommon to have a letterhead stored on your computer rather than having
19 engraved embossed preprinted letterhead as was done in the past. That being the case, the computer
20 nevertheless prints the letterhead that is stored in the computer. If the letterhead had indicated where
21 they were authorized to practice, it should have been pulled down with the letterhead when it was
22 pulled down. Moreover, there is a maxim that even though the burden of proof is on the prosecution,
23 in this case the State Bar, when something is peculiarly within the knowledge of the defendant, here
24 the Respondent, the burden shifts to the other side to produce the evidence. Respondent never
25 submitted any letterhead which showed where they were authorized to practice.

26 Moreover, Respondent and Mr. Giannini's contention that Mr. Giannini was merely a
27 ministerial servant of Respondent, carrying out her wishes and command, and doing no more than
28 a law clerk would do, does not stand up to scrutiny. Mr. Giannini was handling the Spencer matter.

1 He was corresponding with Mercury Insurance by letter and by telephone in which he clearly was
2 discussing California law for a California client on a matter arising in California. He was practicing
3 law in California.

4 Moreover, Mr. Giannini's claim that Mercury knew he was not a lawyer also does not stand
5 up to scrutiny. The following references are to Exhibit 25:

6 1. March 3, 2000, Mercury Insurance correspondence addressed to Joseph R. Giannini,
7 Esq., signed by Loretta Tilley. (Pg. 00008.)

8 2. March 16, 2000, Mercury Insurance correspondence addressed to Joseph R. Giannini,
9 Esq., from Loretta Tilley, regarding Robert Spencer's matter and referring to him as "your client."
10 (Pgs. 00011-00012.)

11 3. April 3, 2000, Mercury Insurance correspondence addressed to "GIANNINI & MURPHY,
12 ATTORNEYS AT LAW," and indicates it is regarding Robert Spencer and referring to him as "your
13 client." (Capitalization omitted.) (Pgs. 00017-18). The letter states:

14 Dear Mr. Giannini:

15 [¶] . . . [¶] I note in reviewing this file today that we took a statement
16 from your client after this accident . . . [¶] . . . [¶] Without such we
17 must stand in [sic] our original decision which is that our insured is
18 not responsible for the damages to your client's vehicle or any
injuries received to your client. [¶] I also note in reviewing your
client's statement that he advised us "

19 In addition, there are two more references to "your client's" in paragraph five of the letter,
20 and the last paragraph makes another reference to "your client's vehicle."

21 4. April 18, 2000, Mercury Insurance correspondence addressed to Joseph R. Giannini, Esq.,
22 referencing Robert Spencer and referring to him as "your client" and making reference to "your
23 client's vehicle" and "your client's injuries or damages." (Pg. 00025-00026).

24 5. April 21, 2000, Mercury Insurance correspondence addressed to Joseph R. Giannini, Esq.
25 regarding "your client Robert Spencer." (Capitalization, spacing and punctuation omitted.) (Pg.
26 00028).

27 6. April 27, 2000, Mercury Insurance correspondence addressed to "GIANNINI &
28 MURPHY[,] ATTORNEYS AT LAW," regarding "your client Robert Spencer." (Capitalization,

1 spacing and punctuation omitted.) (Pg. 00029). The salutation states, "Dear Mr. Giannini" and
2 references "your client's vehicle" and "your client's injury claim" The foregoing letter was
3 signed by Naomi Yamamoto, Claims Supervisor, who is the same Naomi Yamamoto that Mr.
4 Giannini allegedly told that he was not a California lawyer.

5 7. May 15, 2000, Mercury Insurance correspondence addressed to Joseph Giannini regarding
6 "your client Robert Spencer." (Capitalization, spacing and punctuation omitted.) (Pg. 00044). The
7 salutation states, "Dear Mr. Giannini" and makes reference some five times to "your client's
8 vehicle."

9 Each of the foregoing correspondence from Mercury Insurance supports Linam's testimony
10 that she was unaware that Mr. Giannini was not a California attorney, and that she believed him to
11 be one. All of the correspondence from Mercury Insurance supports the conclusion that Mercury
12 Insurance was under the impression that they were dealing with a California lawyer.

13 In addition, the Court notes that a letter, signed by Mr. Giannini, was sent on GIANNINI &
14 MURPHY, *Attorneys-at-Law*, letterhead dated August 20, 2000, to the law firm of Daniels, Fink,
15 Israel & Schonbuch, defense counsel in the *Spencer v. Baker* matter, which did not reference the
16 states in which Mr. Giannini was licensed to practice law or that Mr. Giannini was not licensed to
17 practice law in California .

18 **Count One - Rule 1-300(A) of the Rules of Professional Conduct**⁵

19 OCTC proved by clear and convincing evidence that Respondent wilfully violated rule 1-
20 300(A). Rule 1-300(A) states, "A member shall not aid any person or entity in the unauthorized
21 practice of law." Business and Professions Code section⁶ 6125 states, "No person shall practice law
22 in California unless the person is an active member of the State Bar." Furthermore, section 6126
23 makes it a crime for any person who is not an active member of the State Bar or otherwise authorized
24 pursuant to statute or court rule to practice law in this state to advertise or hold himself or herself
25

26 ⁵Unless otherwise indicated, all further references to rules refer to the Rules of
27 Professional Conduct of the State Bar of California.

28 ⁶Unless otherwise indicated, all further references to sections refer to provisions of the
California Business and Professions Code.

1 out as practicing or entitled to practice law or otherwise practicing law.

2 Inferentially and directly Respondent made much of the fact that the representatives of the
3 Insurance Company were doing the same things as Mr. Giannini; that is, they were discussing
4 liability. As pointed out by the Supreme Court in *Crawford v. State Bar* (1960) 54 Cal.2d 659,
5 although Giannini's "services might lawfully have been performed by . . . insurance companies . .
6 . and other laymen, it does not follow that when they are rendered by an attorney, or in his office,
7 they do not involve the practice of law. People call on lawyers for services that might otherwise be
8 obtained from laymen because they expect and are entitled to legal counsel. Attorneys must conform
9 to professional standards in whatever capacity they are acting in a particular matter." (*Id.* at pp.667-
10 668; *In the Matter of Bragg* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 615.)

11 The Court therefore finds by clear and convincing evidence in the Spencer matter that Mr.
12 Giannini was providing legal services in California by sending correspondence in support of
13 Spencer's claim which advanced legal arguments based upon California law and which addressed
14 various theories of liability and the application of California law and by attempting to settle
15 Spencer's case. As the Supreme Court noted in *Birbrower, etc. v. Superior Court* (1998) 17 Cal.4th
16 119, "no one but an active member of the State Bar may practice law for another person in
17 California. (*Id.* at p. 127.)

18 In addition, the Court finds by clear and convincing evidence that Mr. Giannini held himself
19 out as entitled to practice law in the State of California in correspondence to both Mercury Insurance
20 and defense counsel.

21 Respondent, however, was not naive to Mr. Giannini's actions. She was aware of what he
22 was doing, and she knew he was not licensed to practice law in California. Therefore, by: (1)
23 permitting Mr. Giannini to correspond with Mercury Insurance and defense counsel under the name
24 GIANNINI & MURPHY, *Attorneys-At-Law*, without any indication on the correspondence that Mr.
25 Giannini was not licensed to practice law in California or was only licensed to practice law in certain
26 other states; (2) permitting Mr. Giannini to attempt to settle Spencer's case and to advance legal
27 arguments based upon California law; and (3) not disclosing to Mercury Insurance that Mr. Giannini
28 was not licensed to practice law in this state, Respondent wilfully aided and abetted Mr. Giannini

1 in the unauthorized practice of law in the State of California in wilful violation of rule 1-300(A).

2 **Count Two - Business and Professions Code Section 6106**

3 OCTC proved by clear and convincing evidence that Respondent wilfully violated section
4 6106. Section 6106 provides that the commission of any act involving moral turpitude, dishonesty,
5 or corruption constitutes a cause for suspension or disbarment. By permitting Mr. Giannini to use
6 letterhead entitled "GIANNINI & MURPHY, *Attorneys-at-Law*," and by permitting Mr. Giannini
7 to hold himself out as being entitled to practice law in California, Respondent misrepresented to
8 Mercury Insurance that Mr. Giannini was an attorney entitled to practice law in the State of
9 California. In so doing, Respondent engaged in acts of moral turpitude, dishonesty or corruption in
10 wilful violation of section 6106.

11 **Case No. 02-O-13824 (Taguchi)**

12 On October 26, 1999, Kenji Taguchi, the client herein, signed a substitution of attorney
13 substituting "GIANNINI & MURPHY, TAMELA J. MURPHY" in the United States District Court,
14 Central District of California (see Exhibit 4) lawsuit entitled *Taguchi v. AIU Insurance et al.* [sic].
15 There is no indication on the Substitution of Attorney form that Mr. Giannini was not licensed to
16 practice law in California or was only licensed to practice in certain other states.

17 Furthermore, although the retainer agreement in the Taguchi matter listed the jurisdictions
18 in which each of the partners (Respondent and Mr. Giannini) were members in good standing (see
19 Exhibit 3), the retainer agreement was entered into in California for services in California, and
20 Taguchi's former attorneys would not have been privy to the contents of the retainer agreement.

21 Taguchi is a Japanese citizen, and Mr. Giannini's wife is Japanese. Mr. Giannini put up
22 flyers in Japanese markets soliciting Japanese clients. Taguchi called up Mr. Giannini and, because
23 of the language problem, Mr. Giannini's wife spoke to Taguchi. Allegedly Taguchi was contacting
24 Mr. Giannini regarding tax problems, and Mr. Giannini claims to be a member of the tax court. The
25 retainer agreement in the Taguchi matter and other conversations were translated and interpreted by
26 Toshi, an associate of Taguchi. Taguchi was Mr. Giannini's client, and Mr. Giannini did the work,
27 even though Respondent's name appeared on documents for filing with the Central District.

28 Mr. Giannini signed and disbursed funds to Taguchi from the Giannini & Murphy client trust

1 account (see Exhibit 6).

2 On November 18, 1999, Mr. Giannini wrote a three page letter to Kenji Taguchi, Re: *Taguchi*
3 *v. Dr. Mitsuoka, Japan Medical*. The foregoing letter discusses the value of the case, problems
4 with the statute of limitations, major proof hurdles, credibility issues, causation issues, difficulty
5 proving negligence against medical doctors, costs of litigating the case, and issues with respect to
6 damages, among others. The letter is on Giannini & Murphy, Attorneys at Law letterhead and is
7 signed Giannini & Murphy by Joseph R. Giannini. This Court finds that Mr. Giannini wrote the
8 letter referred to in Exhibit 7, and that he was not supervised by Respondent as he claims.

9 The extensive legal analysis in Exhibit 7 clearly proves by clear and convincing evidence that
10 Mr. Giannini was practicing law in California without a license. Respondent was well aware of Mr.
11 Giannini's actions and participated in them, condoned them, and ratified them. The evidence is clear
12 and convincing that Respondent was aiding and abetting Mr. Giannini, a lawyer unlicensed in the
13 State of California, in the unauthorized practice of law in California.

14 During her testimony, Respondent made reference to Exhibit 5, a letter from Taguchi's
15 former attorneys to Mr. Giannini, which makes reference to Taguchi as their "former client."
16 Although Exhibit 5 was not formally admitted into evidence, the Court infers from Respondent's
17 reference to Exhibit 5, that Taguchi's former attorney had seen Exhibit 4, the Substitution of
18 Attorney form, which indicates that Taguchi was substituting "GIANNINI & MURPHY, TAMELA
19 J. MURPHY" as attorney of record in place of the Feldman and Rothstein firm.

20 **Count One - Rule 1-300(A)**

21 OCTC proved by clear and convincing evidence that Respondent wilfully violated rule 1-
22 300(A). By: (1) failing to disclose to Taguchi's former attorneys that Mr. Giannini was not an
23 attorney licensed to practice law in the State of California and (2) by permitting Mr. Giannini to
24 advance legal arguments based upon California in a letter to Taguchi, Respondent wilfully aided and
25 abetted Mr. Giannini in the unauthorized practice of law in the State of California in wilful violation
26 of rule 1-300(A).

27 **Count Two - Section 6106**

28 OCTC proved by clear and convincing evidence that Respondent wilfully violated section

1 6106. By permitting a Substitution of Attorney form with the firm name of Giannini & Murphy to
2 be seen by Taguchi's former counsel, Respondent misrepresented to Mercury Insurance that Mr.
3 Giannini was an attorney entitled to practice law in the State of California. In so doing, Respondent
4 engaged in an act of moral turpitude, dishonesty or corruption in wilful violation of section 6106.

5 **4. MITIGATING CIRCUMSTANCES**

6 Respondent bears the burden of proving mitigating circumstances by clear and convincing
7 evidence. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, std.1.2
8 (e) ("standard").)

9 Pursuant to Evidence Code section 452(h), the Court takes judicial notice of Respondent's
10 official membership records maintained by the State Bar of California which indicate that she was
11 admitted to the practice of law in the State of California on November 25, 1997, and has no prior
12 record of discipline. (Standard 1.2(e)(i).) However, Respondent's lack of a prior record of discipline
13 is given very little weight in mitigation as she began her partnership with Mr. Giannini shortly after
14 her admission to practice law in California and her misconduct in the Taguchi matter occurred in the
15 fall of 1999, not even two years after her admission to practice law in California . As such, it does
16 not constitute the lengthy blemish-free record necessary to constitute a substantial mitigating
17 circumstance. (See *Kelly v. State Bar* (1988) 45 Cal.3d 649, 658 [7½ years of practice without
18 discipline was "not especially commendable."].)

19 Respondent submitted three good character references. (Standard 1.2(e)(vi).)

20 1. Government lobbyist Edward R. O'Carroll ("O'Carroll"), who has known
21 Respondent since she obtained her license to practice law in this state and who was her law clerk
22 from 1998 through 2001, finds her to be of good moral character and described her as a candid,
23 competent and honest attorney. He also wrote, "During my time working with [Respondent], she
24 definitely supervised and reviewed my work. She kept close tabs on me and advised me very clearly
25 of the limits placed upon legal assistants regarding the practice of law." O'Carroll also stated that
26 he was aware of the State Bar charges against Respondent.

27 2. Judge Allen J. Webster, Jr. of the Los Angeles County Superior Court noted that
28 Respondent appeared in his court numerous times. He "found [Respondent] to manifest outstanding

1 moral character and high ethical standards.” He also described Respondent as honest, candid and
2 professional. There is no indication that Judge Webster is aware of the charges against Respondent
3 in this matter.

4 3. Attorney Louis Sepe (“Sepe”), who has known Respondent for four years,
5 described her as being dependable, honest and having good moral character. In his opinion, she is
6 also a competent, compassionate and caring attorney. There is no indication that Sepe is aware of
7 the charges against Respondent in this matter.

8 In addition, Mr. Giannini submitted a declaration in this matter in which he describes her
9 as a caring, good, honest and friendly person.

10 However, the Court gives only minimal weight to these good character references as they do
11 not constitute “an extraordinary demonstration of good character of the member attested to by a *wide*
12 *range of references* in the legal and general communities and who are aware of the *full extent of the*
13 *member’s misconduct.*” (Italicize added.) (Standard 1.2(e)(vi).) The four individuals set forth above
14 do not constitute “a wide range of references.” Furthermore, there is no evidence that Sepe or Judge
15 Webster were aware of the charges against Respondent, and although O’Carroll stated that he was
16 aware of the State Bar charges against Respondent, this hardly constitutes evidence that he was
17 aware of the “full extent of [Respondent’s] misconduct.

18 There is no evidence that Respondent was suffering from emotional difficulties at the time
19 of her misconduct. (Standard 1.2(e)(iv).) Any evidence of emotional difficulties suffered by
20 Respondent as a result of the State Bar matter is not considered a mitigating circumstance.

21 Upon learning that the State Bar had a problem with the partnership between Mr. Giannini
22 and Respondent, Mr. Giannini and Respondent decided to no longer be partners, and the partnership
23 was terminated. (Standard 1.2(e)(vii).)

24 The Court does not find clear and convincing evidence that no harm was caused to Spencer,
25 Taguchi or Mercury Insurance as a result of Respondent’s misconduct. (Standard 1.2(e)(iii).)

26 Furthermore, the Court does not find clear and convincing evidence that Respondent acted
27 in good faith with respect to her conduct in this matter. (Standard 1.2(e)(ii).)

5. AGGRAVATING CIRCUMSTANCES

Respondent engaged in multiple acts of misconduct in this matter. (Standard 1.2(b)(ii).)

Respondent wilfully entered into a partnership in California with Mr. Giannini who was not authorized to practice law in California. Respondent was dishonest with the Court in stating that she was unaware of sections 6125 and 6126. Respondent was dishonest with the Court in stating that she supervised Giannini every step of the way in the Spencer matter, and in agreeing that he was a “minister.” Respondent was dishonest with the Court in testifying under oath to the foregoing misrepresentations, as she did by testifying that the letterheads omitted where they were licensed to practice because an asterisk was not pulled down.

Respondent’s misconduct was surrounded by bad faith. (Standard 1.2(b)(iii). Respondent knew that Mr. Giannini was an activist for reciprocal admission. In fact, Respondent met Mr. Giannini at a meeting regarding reciprocal admission. She was not naive and worked with Mr. Giannini to set up the partnership. Nevertheless, Respondent and Mr. Giannini ignored the plain language of the ethical rules, instead seeing only what they wanted to see and reading only what they wanted to read.

6. DISCUSSION

In determining the appropriate discipline to recommend in this matter, the Court looks at the purposes of disciplinary proceedings and sanctions. The purpose of State Bar disciplinary proceedings is not to punish the attorney, but to protect the public, to preserve public confidence in the profession and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; *Cooper v. State Bar* (1987) 43 Cal.3d 1016, 1025; standard 1.3.)

In addition, standard 1.6(b) provides that the specific discipline for the particular violation found must be balanced with any mitigating or aggravating circumstances, with due regard for the purposes of imposing disciplinary sanctions.

In determining the proper degree of discipline, the Court looks to the standards, as well as to case law for guidance. In this case, the standards provide for the imposition of sanctions ranging from reproof to disbarment. (Standards 2.3 and 2.10.) In addition, standard 1.6(a) states, in

1 pertinent part, "If two or more acts of professional misconduct are found or acknowledged in a single
2 disciplinary proceeding, and different sanctions are prescribed by these standards for said acts, the
3 sanction imposed shall be the more or most severe of the different applicable sanctions."

4 The standards, however, are only guidelines and do not mandate the discipline to be imposed.
5 (*In the Matter of Moriarty* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 245, 250-251.) "[E]ach
6 case must be resolved on its own particular facts and not by application of rigid standards." (*Id.* at
7 p. 251.)

8 Respondent contends that the appropriate discipline in this matter is a reproof. OCTC
9 recommends, inter alia, that Respondent be suspended from the practice of law for one year, that
10 execution of said suspension be stayed, and that Respondent be placed on probation for two years
11 on conditions including a 90-day period of actual suspension. While the Court believes a period of
12 actual suspension is appropriate, the Court finds a 90-day period of actual suspension excessive in
13 this matter.

14 Mr. Giannini has been an activist for reciprocity in California. He has engaged in extensive
15 litigation in California on his own behalf, as well as on behalf of others, regarding reciprocity. He
16 is not, however, licensed to practice law in California and there was no evidence of any of the
17 limited exceptions⁷ which would have permitted Mr. Giannini to practice law in California.
18 Respondent, an attorney with limited experience, met Mr. Giannini at a reciprocity meeting.

19 Respondent, who was admitted to practice law in California on November 25, 1997, entered
20 into a law partnership in California with Mr. Giannini who was licensed to practice law in
21 Pennsylvania in 1983 and in New Jersey in 1984. The law firm of Giannini & Murphy was formed
22 within months of Murphy's admission to the State Bar of California.

23 Based on the foregoing background, it is therefore preposterous to believe the contrived story
24 of Respondent and Mr. Giannini that the latter was merely a "minister" carrying out his ministerial
25

26 ⁷These limited exceptions are pro hac vice admission, "Out-of-State Attorney Arbitration
27 Counsel," military counsel, or registered foreign legal consultants. (Vapnek, et al., Cal. Practice
28 Guide: Professional Responsibility (The Rutter Group 2003) ¶¶ 1:1116 to 1:120.1, pp. 1.28.4 to
1-28.10.)

1 duties under the watchful eye and constant supervision of Respondent. Mr. Giannini was a partner
2 in a California law firm. In fact, looking at the letterhead, one would think that he was the senior
3 partner.

4 Respondent and Mr. Giannini are advocates for reciprocity, and looked for every loophole
5 they could find to form a California law firm. They opined that large law firms had out-of-state
6 attorneys as partners, ergo they could try it, too. They relied on information such as the American
7 Bar Association's Model Rules and an article by a Professor Miller, among others. Respondent
8 testified that they did their homework. However, in doing their homework, they allegedly failed to
9 check the Business and Professions Code. One finds the latter allegation hard to believe.

10 Equally hard to believe is that a mere functionary (Mr. Giannini), preparing letters under the
11 supervision of Respondent, signed everyone of the letters in evidence in the two matters before the
12 Court. One would expect that if Giannini was merely carrying out the ministerial function of
13 preparing the letters, he would have done so for the signature of Respondent.

14 Even harder to believe is that no pulling down an asterisk was the cause of the omission on
15 every letterhead of where the partners were admitted to practice. If a letterhead is stored on the
16 computer, pulling down the letterhead pulls down what is there.

17 Thus, there is clear and convincing evidence that Respondent aided and abetted Giannini in
18 the unauthorized practice of law in California by entering into a law partnership with him, by
19 allowing him to use letterhead that did not designate where they were licensed to practice, and by
20 allowing him to practice law by engaging in extensive analysis relative to a matter in California for
21 clients in California relating to California law.

22 In addition, the Court found clear and convincing evidence in both matters that Respondent
23 engaged in an act or acts of moral turpitude by misrepresenting to others Mr. Giannini's ability to
24 practice law in California.

25 In determining the appropriate discipline to recommend in this matter, the Court reviewed
26 the following cases: *Bluestein v. State Bar* (1974) 13 Cal.3d 162; *Crawford v. State Bar* (1960) 54
27 Cal.2d 659; *In the Matter of Nelson* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr 178; *In the Matter*
28 *of Jones* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 411; and *In the Matter of Bragg* (Review

1 Dept. 1997) 3 Cal. State Bar Ct. Rptr 615. The Court finds *Crawford* and *Bluestein* the most
2 instructive; however, each of these cases was published years before the adoption of the Standards
3 for Attorney Sanctions for Professional Misconduct. As the Review Department of the State Bar
4 Court noted in *In the Matter of Lybbert* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 297, "The
5 standards were adopted by the State Bar Board of Governors in 1985 in order to provide guiding
6 principles in fixing discipline for lawyer misconduct." (*Id.* at p. 307.)

7 In *Crawford*, the attorney was publicly reprovved for sharing the profits of professional
8 employment with a layman; employing another to solicit employment; and for "directly or
9 indirectly" aiding or abetting the unauthorized practice of law.

10 Crawford, a relatively inexperienced attorney, formed a partnership with his father, a
11 disbarred attorney. The profits of the partnership were to be divided equally between the two men.

12 The name on the window sign was changed to "Crawford & Crawford--Attorney at Law-Tax
13 Consultant." The stationery heading was changed to "Offices of Crawford & Crawford" with
14 Crawford designated as "Attorney at Law" and his father as "Tax Consultant" in the top left
15 margin. Letters with respect to all matters were mailed to clients on this stationery and many
16 relating to billing with respect to the legal practice, were signed by Crawford's father without any
17 identification or title other than that on the letterhead. Although Crawford testified that his father
18 told all clients of his disbarment, the Supreme Court found the use of the Crawford & Crawford
19 name in this matter misleading.

20 In addition, new bank accounts were opened in the name of "Crawford & Crawford," with
21 all receipts for both practices being deposited in these accounts and all costs advanced and all
22 operating expenses paid out of this account. Furthermore, statements, checks and envelopes bore
23 only the name of the firm without any identification as to its members.

24 After his disbarment, Crawford's father continued his practice as a tax consultant in the same
25 office as prior to his disbarment. Crawford's father did not appear in court, and his name no longer
26 was used as an attorney; however, he did confer directly with clients regarding the preparation of
27 birth certificates and deeds, escrows, probate matters, mining claims, real estate deals and a
28 partnership dissolution. He also gave legal advice to a client regarding mining claims; handled an

1 entire probate matter (with Crawford simply making the court appearances); took full responsibility
2 for the handling of an escrow, including conferring with the clients alone; and aided in the
3 culmination of a loan that involved a partnership dissolution. After the member became aware of
4 an investigation into the matter, that the bank accounts, letterheads, and law office became clearly
5 identified and the father moved his tax practice to another location.

6 In determining that a public reproof was appropriate, Crawford's youth and limited
7 professional experience were considered; the fact that he had not previously been the subject of a
8 disciplinary proceeding; that he had a good reputation in the community; and that his misconduct
9 grew out of a commendable but misdirected devotion to his father.

10 In *Bluestein*, the attorney, who had a prior public reproof, attempted use of criminal
11 proceedings to collect his legal fee in a civil matter and aided an unlicensed person to practice law.
12 Bluestein agreed to "drop" criminal assault and battery charges he had preferred against his client's
13 husband if his client's husband would pay fees due to Bluestein for representing the wife in divorce
14 proceedings before the parties' reconciliation. Such an oppressive method of attempting to collect
15 a fee was found by the Supreme Court to involve moral turpitude. Bluestein also was found to have
16 aided an unlicensed person to practice law. Bluestein introduced a man he knew was not licensed
17 to practice law in this state to the family of a man arrested in a foreign country and advised them that
18 the unlicensed person was an attorney in another state and had practiced law in Europe. Bluestein
19 intentionally conveyed the impression to the man's family that he and the unlicensed person were
20 associated in some way, and he allowed the unlicensed person to consult with the man's family
21 without any supervision by a member of the State Bar of California. The Supreme Court suspended
22 Bluestein six months based on the above actions.

23 However, as noted earlier, both *Crawford* and *Bluestein* were published prior to the adoption
24 of the standards. Therefore, after considering the nature of Respondent's misconduct, the mitigating
25 and aggravating circumstances found by the Court, the discipline recommendation of each party, the
26 standards, and the case law cited above, the Court find that the appropriate discipline
27 recommendation includes a period of stayed suspension and a lengthy period of probation with
28 conditions, including a period of actual suspension.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. That during the first 60 days of said period of probation, Respondent shall be actually suspended from the practice of law in California;

3. Within 10 days of any change, Respondent shall report to the Membership Records Office of the State Bar, 180 Howard Street, San Francisco, California, 94105-1639, and to the State Bar's Office of Probation in Los Angeles, all changes of information, including current office address and telephone number, or if no office is maintained, the address to be used for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.

4. Respondent shall submit written quarterly reports to the State Bar's Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent shall state whether Respondent has complied with the State Bar Act, the Rules of Professional conduct, and all conditions of probation during the preceding calendar quarter. If the first report will cover less than 30 days, that report shall be submitted on the next following quarter date, and over the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than 20 days before the last day of the probation period and no later than the last day of the probation period.

5. Subject to the assertion of applicable privileges, Respondent shall answer fully, promptly, and truthfully, any inquiries of the State Bar's Probation unit which are directed to Respondent personally or in writing, relating to whether Respondent is complying or has complied with the conditions contained herein.

6. Within one year of the effective date of the discipline herein, Respondent shall provide

1 to the Probation Unit satisfactory proof of attendance at a session of the Ethics School, given
2 periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639,
3 or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end
4 of that session. Arrangements to attend Ethics School must be made in advance by calling (213)
5 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing
6 Legal Education Requirement ("MCLE"), and Respondent shall not receive MCLE credit for
7 attending Ethics School (Rule 3201, Rules of Procedure of the State Bar.)

8 7. The period of probation shall commence on the effective date of the order of the Supreme
9 Court imposing discipline in this matter.

10 8. At the expiration of the period of this probation, if Respondent has complied with all the
11 terms of probation, the order of the Supreme Court suspending Respondent from the practice of law
12 for one year shall be satisfied and that suspension shall be terminated.

13 It is also recommended that Respondent be ordered to take and pass the Multistate
14 Professional Responsibility Examination given by the National Conference of Bar Examiners within
15 one year after the effective date of the discipline imposed herein and furnish satisfactory proof of
16 such to the State Bar's Office of Probation within said period.

17 **8. COSTS**

18 It is further recommended that costs be awarded to the State Bar pursuant to Business and
19 Professions Code section 6086.10, and that such costs be payable in accordance with Business and
20 Professions Code section 6140.7

21
22 Dated: February 6, 2004

23 
24 ALBAN I. NILES
25 Judge of the State Bar Court
26
27
28

CERTIFICATE OF SERVICE
[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on February 6, 2004, I deposited a true copy of the following document(s):

Decision, filed February 6, 2004

in a sealed envelope for collection and mailing on that date as follows:

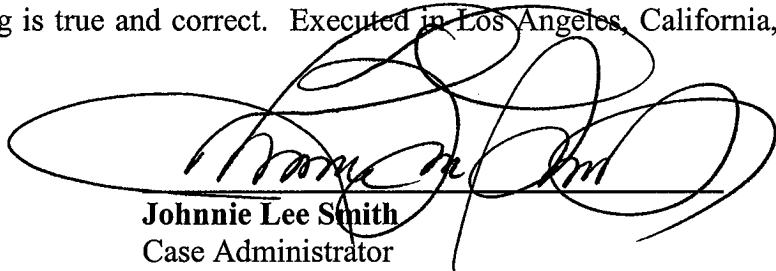
- [X] by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

TAMELA J. MURPHY
8306 WILSHIRE BLVD #896
BEVERLY HILLS CA 90211

- [X] by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

Brooke Schafer, Enforcement, Los Angeles

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on **February 6, 2004.**

A large, stylized handwritten signature in black ink, appearing to read "Johnnie Lee Smith", is written over a horizontal line.

Johnnie Lee Smith
Case Administrator
State Bar Court